

City Council Introduction: **Monday**, June 7, 2004
Public Hearing: **Monday**, June 14, 2004, at **1:30 p.m.**

Bill No. 04R-127

FACTSHEET

TITLE: **USE PERMIT NO. 94B**, requested by St. Elizabeth Community Health Center, to increase the boundary of the existing Use Permit No. 94A to permit a total of 47,000 sq. ft. of floor area and a reduction in the front yard setback along N. 26th Street from 50' to 20', on property generally located south of Kensington Drive and west of North 26th Street.

STAFF RECOMMENDATION: Conditional Approval

ASSOCIATED REQUESTS: Change of Zone No. 04033 (04-112).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/26/04
Administrative Action: 05/26/04

RECOMMENDATION: Conditional Approval, with amendments (9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes').

FINDINGS OF FACT:

1. This amendment to Use Permit No. 94A and the associated change of zone request were heard at the same time before the Planning Commission.
2. The purpose of this proposal is to increase the boundary of the existing B-2 use permit for a pharmacy.
3. The staff recommendation of conditional approval is based upon the "Analysis" as set forth on p.3-4, concluding that this amendment to the use permit and the associated change of zone are in conformance with the Zoning Ordinance and the Comprehensive Plan.
4. The applicant's testimony and other testimony in support is found on p.6-7. The applicant submitted proposed amendments to the conditions of approval as set forth on p.20-22.
5. There was no testimony in opposition. The record consists of one letter expressing drainage concerns (p.23); however, the applicant met with the neighbors and agreed to revise the grading and drainage plan to maximize the drainage area flowing to No. 26th Street (Condition #2.1.3 on p.4).
6. On May 26, 2004, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend conditional approval, as set forth in the staff report dated May 11, 2004, with the amendments requested by the applicant, amending Condition #2.1.1.3 and adding Condition #2.1.3 (p.4).

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 1, 2004

REVIEWED BY: _____

DATE: June 1, 2004

REFERENCE NUMBER: FS\CC\2004\UP.94B

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 26, 2004 PLANNING COMMISSION MEETING

****As Revised and Recommended for Conditional Approval
By Planning Commission: 5/26/04****

P.A.S.: Change of Zone #04033 and **Use Permit #94B.**

This is a combined staff report for related items. This report contains a single background and analysis section for all items. However, there are separate conditions provided for each individual application.

PROPOSAL: To change the zone from O-3, Office Park to B-2, Neighborhood Business District and increase the boundary of existing use permit #94A to include the newly zoned portion.

LOCATION: Generally located south of Kensington Drive and west of N. 26th Street.

LAND AREA: 0.50 acres, more or less.

CONCLUSION: In conformance with the Comprehensive Plan and Zoning Ordinance.

RECOMMENDATION: Change of Zone #04033:

Use Permit #94B:

Approval

Conditional Approval

GENERAL INFORMATION:

LEGAL DESCRIPTION: See attached.

EXISTING ZONING: O-3, Office Park.

EXISTING LAND USE: Undeveloped.

SURROUNDING LAND USE AND ZONING:

North:	Undeveloped	B-2, Neighborhood Business
South:	Undeveloped	O-3, Office Park
East:	Medical offices	B-2
West:	Residential, undeveloped	R-2, Residential

HISTORY:

Use Permit #94A to add 2 ground signs was approved by the City Council on **September 14, 1998.**

Use Permit #95 for 12,500 square feet was approved by City Council on **January 13, 1997**.

Use Permit #94 for 45,000 square feet of retail/commercial/medical center was approved by City Council on **January 13, 1997**.

Change of Zone # 2821 to change the zone from R-3 to B-2 and O-3 was approved by City Council on **October 24, 1994**.

The area was zoned A-2, Single Family until it was updated to R-3, Residential during the **1979** zoning update.

ASSOCIATED APPLICATIONS: Administrative Amendment #04040 requests to remove the parcel from the existing use permit #95 and reduce the floor area by 2000 square feet so it may be transferred to use permit #94B.

COMPREHENSIVE PLAN SPECIFICATIONS: The Comprehensive Plan indicates commercial in this area (F-25).

TRAFFIC ANALYSIS: Kensington Drive and N. 26th Street are both classified as local streets (F-103).

ANALYSIS:

1. This is a request to change the zone on a parcel from O-3 to B-2 and increase the boundary of the existing B-2 use permit for a pharmacy. 2,000 square feet of floor area is being transferred from Use Permit #95 which allows a total floor area of 47,000 square feet in Use Permit #94B. The pharmacy use is not allowed in the O-3 zoning district and is why the applicant requests this change.
2. The Comprehensive Plan indicates this area as commercial. Planning and Public Works and Utilities Department staff determined that the change is negligible and does not object to the request. The overall approved floor area does not change, but simply will be transferred from one use permit to the other.
3. Use Permit #95 reduced the minimum front yard setback along N. 26th Street to 30', which was a typographical error and should have been reduced to 20'. The Law Department is taking forward an amendment to the resolution to correct the typographical error at this time. Planning staff does not object to maintaining the previously approved front yard setback reduction to 20' along N. 26th Street. Use Permit #95 also reduced the front yard along Kensington Drive, however, the developer does not wish to have the setback reduced and the site plan shows a 50' front yard setback.
4. Landscaping and screening is required in the B-2 and O-3 district based on building coverage. The B-2 district is required to have a 60% screen from 0'-10' when abutting residential, since the proposed change is not directly abutting the residential district this screening would not be required. Planning staff believes this additional screen should be required since there is a use impact by having the B-2 zoning closer to the residential. The additional screening is a condition of the approval of this permit.

5. There is a 50' wide strip of O-3 to the west of this request, which provides an open space buffer to the existing residential and discourages further expansion of this district. In combination with an added screen along the west side of the property line, there should be less impact on the existing residential neighborhood.

USE PERMIT CONDITIONS:

Site Specific:

1. This approval permits a total of 47,000 square feet of floor area and a reduction in the front yard setback along N. 26th Street from 50' to 20'.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 2.1.1 A revised site plan showing the following revisions:
 - 2.1.1.1 Correct the typo in the "Existing Use Permit Legal Description".
 - 2.1.1.2 Combine the legal descriptions into one description.
 - 2.1.1.3 Provide a wall constructed of materials similar to the building of a height and length to screen the drive thru and a 60% landscape screen from 0' to 10' along the west property line as it abuts the O-3 district. A note may fulfill this requirement stating that the landscape plan will be reviewed with the building permit. (**Per Planning Commission, at the request of the applicant and agreed upon by staff, 05/26/04**)
 - 2.1.2 A permanent reproducible final site plan as approved.
 - 2.1.3 Revise the grading and drainage plan to maximize the drainage area flowing to N. 26th Street to the satisfaction of Public Works and Utilities Department. (**Per Planning Commission, at the request of the applicant and agreed upon by staff, 05/26/04**)
 - 2.2 The construction plans comply with the approved plans.
 - 2.3 The required easements as shown on the site plan are recorded with the Register of Deeds.

STANDARD CONDITIONS:

3. The following conditions are applicable to all requests:
 - 3.1 Before occupying the development, all development and construction is to comply with the approved plans.
 - 3.2 All privately-owned improvements, including landscaping and recreational facilities, are to be permanently maintained by the owner or an appropriately established homeowners association approved by the City.
 - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
 - 3.4 This resolution's terms, conditions, and requirements bind and obligate the permittee, its successors and assigns.
 - 3.5 The applicant shall sign and return the letter of acceptance to the City Clerk within 30 days following the approval of the special permit, provided, however, said 30-day period may be extended up to six months by administrative amendment. The clerk shall file a copy of the resolution approving the special permit and the letter of acceptance with the Register of Deeds, filling fees therefor to be paid in advance by the applicant.
4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolutions approving previous permits remain in force unless specifically amended by this resolution.

Prepared by:

Becky Horner, 441-6373, rhorer@ci.lincoln.ne.us
Planner

DATE: May 11, 2004

APPLICANT: St. Elizabeth Community Health Center
555 S. 70th Street

OWNER: Same

CONTACT: Cale Luckey
Olsson Associates
1111 Lincoln Mall
(402)474-6311

**CHANGE OF ZONE NO. 04033
and
USE PERMIT NO. 94B**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 26, 2004

Members present: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand.

Staff recommendation: Approval of the change of zone and conditional approval of the use permit amendment.

Ex Parte Communications: None.

These applications were removed from the Consent Agenda and had separate public hearing due to a letter received with concerns about drainage.

Proponents

1. DaNay Kalkowski appeared on behalf of **St. Elizabeth Community Health Center**, owner of the office zoned property located west of 27th Street and South of Kensington Drive. Kalkowski distributed a motion to amend the conditions of approval on the use permit and an exhibit. The applicant met with the four neighbors that abut the relevant portion of the property affected by this change. One of the major issues was a drainage question. The neighbors were concerned about the drainage swale that runs east of their lots and along the west side of this property, basically the 50' setback area down along the back of the lots. They are concerned about the amount of water and drainage that flows down that area in a major storm event. The applicant committed to review the grading plan and to look at maximizing the amount that could drain over to N. 26th Street and reduce the amount that this project drains back to the drainage swale. Public Works was supportive of this grading plan change and the plan was mailed to the neighbors. The revised grading plan shows that a majority of the drainage from this commercial area can be diverted over to 26th Street, which reduces the amount that is draining back to the swale. The swale does not drain a huge area in the minor storm event. In the event of a major storm, the detention pond for the commercial area north of Kensington Drive is sufficient to overflow the detention. Then there would be water that runs down the drainage swale, but that is the way it is designed to work. Kalkowski stated that the applicant has been able to minimize the amount of water coming from this project and contributing to that in the major storm event.

Kalkowski requested to add a condition of approval to revise the grading plan to maximize the drainage that goes over to 26th Street. She also indicated that staff is in agreement.

The other issue is Condition #2.1.1.3, which requires a 60% screen up to 10' high. Kalkowski stated that the applicant had also offered to construct a wall built of the same materials as the building to provide some further screening of the drive-through area.

2. Carol Brown, 2201 Elba Circle, testified in support. She knows what is proposed for this area and she thinks it is an excellent idea. It is close to the Autumn Ridge Medical Center and close to an elderly complex. They have a nice drainage in that property. However, she is concerned about the drainage on the other side of Superior Street which is overgrown with trees and shrubbery. She would think that that nice drainage area on the north side of Superior behind 26th flows very well, but once it gets across Superior Street behind IHOP and Rod Kush's warehouse, it is slowed down because that ditch is so overgrown and full of trash. She would like the city to clean that up and dredge it to allow a better flow of drainage from one area to the other.

3. Leroy Ang, 5330 No. 25th, who submitted the letter about the drainage concerns, testified in support. He also agreed with Carol Brown that some of the drainage should be cleaned out.

There was no testimony in opposition.

Dennis Bartels of Public Works agreed with the proposed amendments.

With respect to the drainage channel to which Carol Brown referred, it is downstream, on private property and is privately owned and maintained. The city does not have responsibility to maintain that ditch and the city does not have authority to clean out that ditch. Bartels believes that it is far enough downstream that it does not affect the drainage problems on this application.

But, as part of the development of that land, Carlson assumes proper maintenance of the detention is part of the owner's responsibility. Bartels stated that the detention is on the upstream. The ditch that Carol Brown is concerned about is from Superior Street south. Part of the ditch is in developed property and part of it is still on an irregular tract where the city has not taken any zoning action.

Bills-Strand suggested that the new floodplain standards recently adopted require that one property owner cannot cause water to flow onto someone else's property. Bartels indicated that the new standards pertain to new development.

Marvin believes the owner could be required to kill the weeds. Bartels agreed that there is an ordinance against the weeds and vegetation, but he is not sure of all of the steps that would be required to force the property owner to do that. Public Works does not have the authority to order that a private ditch be cleaned up.

CHANGE OF ZONE NO. 04033

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 26, 2004

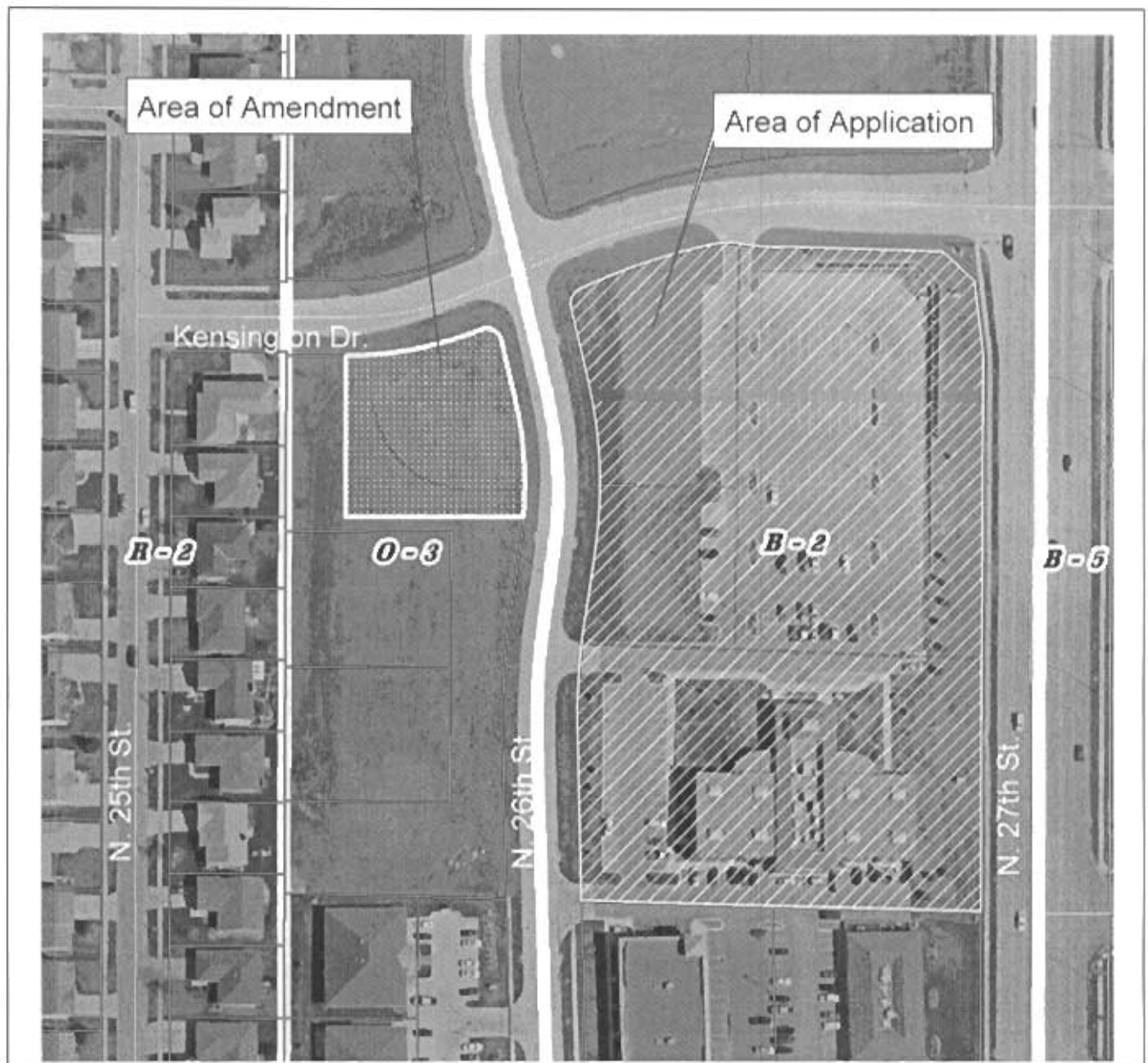
Carlson moved approval, seconded by Taylor and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.

USE PERMIT NO. 94B

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 26, 2004

Taylor moved to approve the staff recommendation of conditional approval, with the amendments proposed by the applicant, seconded by Carlson and carried 9-0: Marvin, Krieser, Carlson, Larson, Sunderman, Taylor, Pearson, Carroll and Bills-Strand voting 'yes'. This is a recommendation to the City Council.



2002 aerial

Use Permit #94B N. 26th & Kensington Dr.

Zoning:

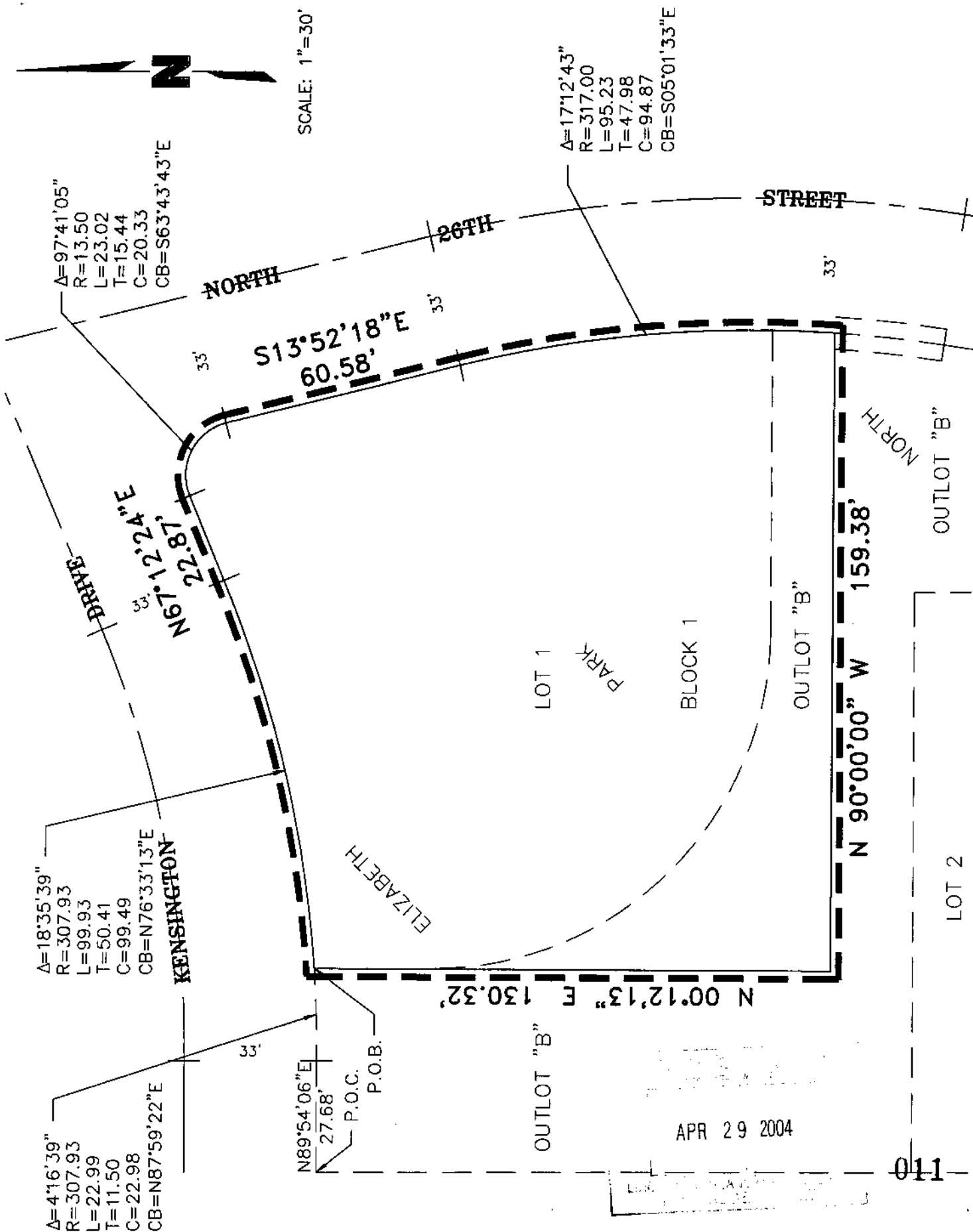
R-1 to R-6	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-T	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

One Square Mile
Sec. 1 T10N R6E





SCALE: 1"=30'





OLSSON ASSOCIATES
ENGINEERS • PLANNERS • SCIENTISTS • SURVEYORS

29 April 2004

Mr. Marvin S. Krout, Director
Lincoln Lancaster Planning Department
County-City Building
555 South 10th Street, Suite 213
Lincoln, NE 68508

Re: Elizabeth Park North, 26th & Kensington Drive
Amendment to Use Permit # 94 and Change Of Zone
OA Project No. 2004-0437

Dear Mr. Krout,

We are requesting an "Amendment to the Use Permit" to expand the Elizabeth Park Use Permit #94 to include lot 1 and a portion of outlot "B", block 1 Elizabeth Park North. This property was formerly part of the Block 1, Elizabeth Park North Use Permit #95. We are also requesting a change of zone from O-3 "Office Park District" to B-2 "Planned Neighborhood Business District".

We are requesting this Amendment and Change of Zone to locate a 2,000 square foot drive thru pharmacy on this property.

We have not been able to attain the complete Autocad drawing files for the approved Use Permit. We have attained the most recent site plan. However, it did not include the general notes, waivers, meets and bounds legal description, etc. Our submittal consists of the site plan that we were able to attain plus the amended area.

We are requesting a waiver of the required setback for the front yard along North 26th Street, from 50' to 20'. The existing portion of the Use Permit #94 shows 20' of setback along North 26th street. The previous O-3 zoning also allowed for a 20' setback for this area. We will maintain the required 50' setback along Kensington Drive and where the proposed B-2 zoning abuts the residential area to the west.

Enclosed please find the following:

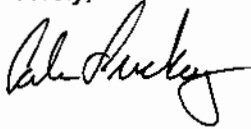
1. Site Plan, Sheet 1; 21 copies
2. City of Lincoln Zoning Application; "Use Permit; Amendment"
3. Change of Zone Application and exhibits
4. Filing fee for "Use Permit & Change of Zone"; \$1,110.00.
5. Certificates of Ownership for the lots being rezoned
6. 8 1/2" x 11" Reduced Drawings of the Site Plans

APR 29 2004

Mr. Marvin S. Krout
29 April 2004
Page 2

Please give me a call if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Cale Luckey". The signature is fluid and cursive, with the first name "Cale" and last name "Luckey" clearly distinguishable.

Cale Luckey

cc Don Linscott
DaNay Kalkowski

Kraut-M.Letter404.doc

APR 29 2004

014

ELIZABETH PARK NORTH OFFICE BUILDING

PERMIT TO USE PERMIT #94 SITE PLAN

APR 29 2004

OWNER & DEVELOPER

DON LINSBOTT
300 N. 44TH ST., SUITE 100
LINCOLN, NE 68503
PHONE: (402)467-1234

ST. ELIZABETH COMMUNITY
HEALTH CENTER
555 SOUTH 70TH STREET
LINCOLN, NE 68510

EXISTING USE PERMIT

LEGAL DESCRIPTION

LOTS 1, 2, 3 AND OUTLOT "A", BLOCK 2
ELIZABETH PARK NORTH +

AMENDED PORTION

LEGAL DESCRIPTION

A LEGAL DESCRIPTION FOR A TRACT OF LAND COMPOSED OF LOT 1 BLOCK 1, AND A PORTION OF OUTLOT "B", ELIZABETH PARK NORTH, LOCATED IN THE SOUTHEAST QUARTER OF SECTION 1, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID OUTLOT "B", THENCE ON AN ASSUMED BEARING OF NORTH 89 DEGREES 52 MINUTES 00 SECONDS

OLSSON ASSOCIATES

ENGINEERS - PLANNERS - SCIENTISTS - SURVEYORS

1111 LINCOLN HALL - LINCOLN, NEBRASKA 68506 - 402-474-8311 - FAX 402-474-8180
LINCOLN, OMAHA, GRAND ISLAND, HOLDREGE, KANSAS CITY, PHOENIX, DENVER, MINNEAPOLIS



Memorandum

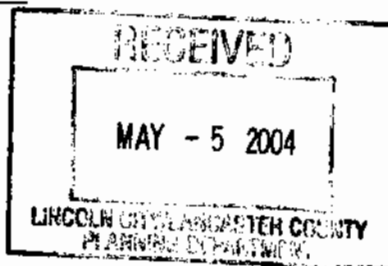
To:	Becky Horner, Planning Dept.
From:	Bruce Briney, Public Works and Utilities
Subject:	Administrative Amendment #04040 to Use Permit #95 Elizabeth Park North
Date:	May 12, 2004
cc:	Randy Hoskins

The City Engineer's Office of the Department of Public Works and Utilities has reviewed the application for Administrative Amendment #04040 to Use Permit #95 for Elizabeth Park North located at North 26th Street and Kensington Drive. Administrative Amendment #04040 removes Lot 1 from the use permit, adjusts the lot line between Lots 2 and 3, and increases the number of parking stalls. Public Works has no objection to the application.

SEACREST & KALKOWSKI, P.C.

1111 LINCOLN MALL, SUITE 350
LINCOLN, NEBRASKA 68508-3905

TELEPHONE (402) 435-6000
FACSIMILE (402) 435-6100



KENT SEACREST
E-MAIL: kent@sk-law.com

DANAY KALKOWSKI
E-MAIL: danay@sk-law.com

May 4, 2004

Dear Neighbor:

Our office represents Saint Elizabeth Community Health Center ("St. Elizabeth"), the owner of Lot 1, Block 1, Elizabeth Park North, Lincoln, Lancaster County, Nebraska ("Lot 1"). Lot 1 is currently zoned O-3 Office Park District and is part of Use Permit No. 95. St. Elizabeth has submitted an application to the City Planning Department proposing to change the zone of Lot 1 from O-3 to B-2 Neighborhood Business District, to allow the construction of a free standing 2,000 square foot pharmacy on the lot. This change will also require an Amendment to the Use Permit. Enclosed please find a site plan which shows how the pharmacy would be situated on Lot 1. Also enclosed is a rendering showing what the proposed pharmacy will look like.

We would like to invite you to attend an informal meeting to discuss the proposed change of zone and use for Lot 1. Please mark your calendars for **Tuesday, May 18, 7:00 P.M. at Campbell Elementary School in the Multi-Purpose Room, 2200 Dodge**. We welcome your comments and questions, and look forward to seeing you at the meeting.

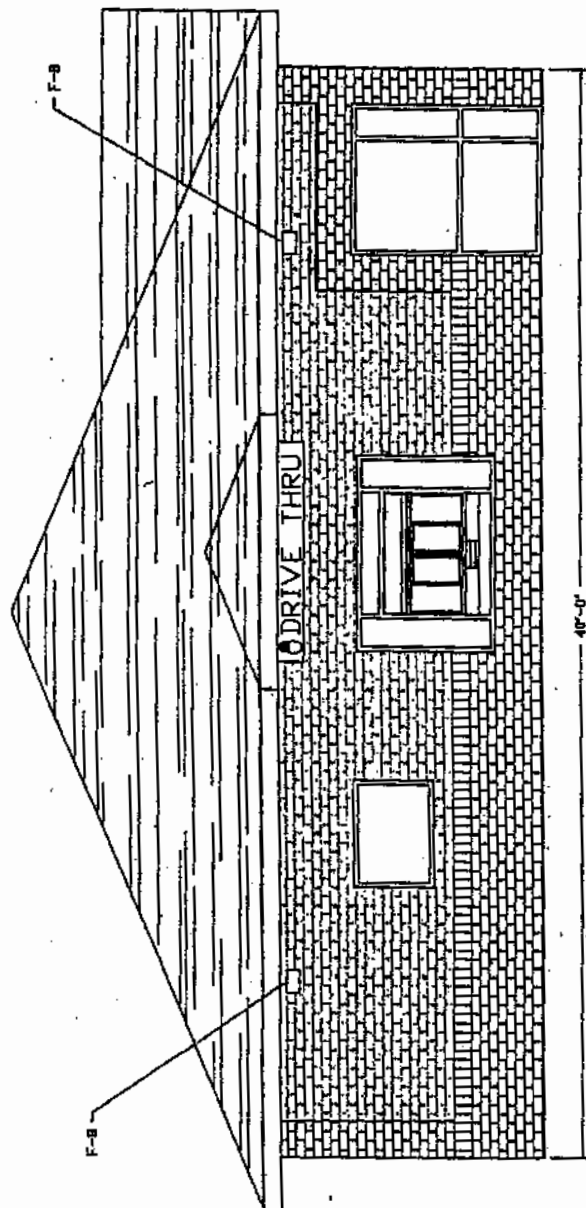
If you have any questions regarding the enclosed or are unable to attend the meeting, please feel free to give me a call.

Very truly yours,

Danay Kalkowski
DANAY KALKOWSKI
For the Firm

Enclosures

cc: Becky Horner, Planning Department
Don Linscott, Mega Commercial Corporation



018

MEDICAP PHARMACY
50x40 PROTO-TYPE

DRIVE THRU ELEVATION

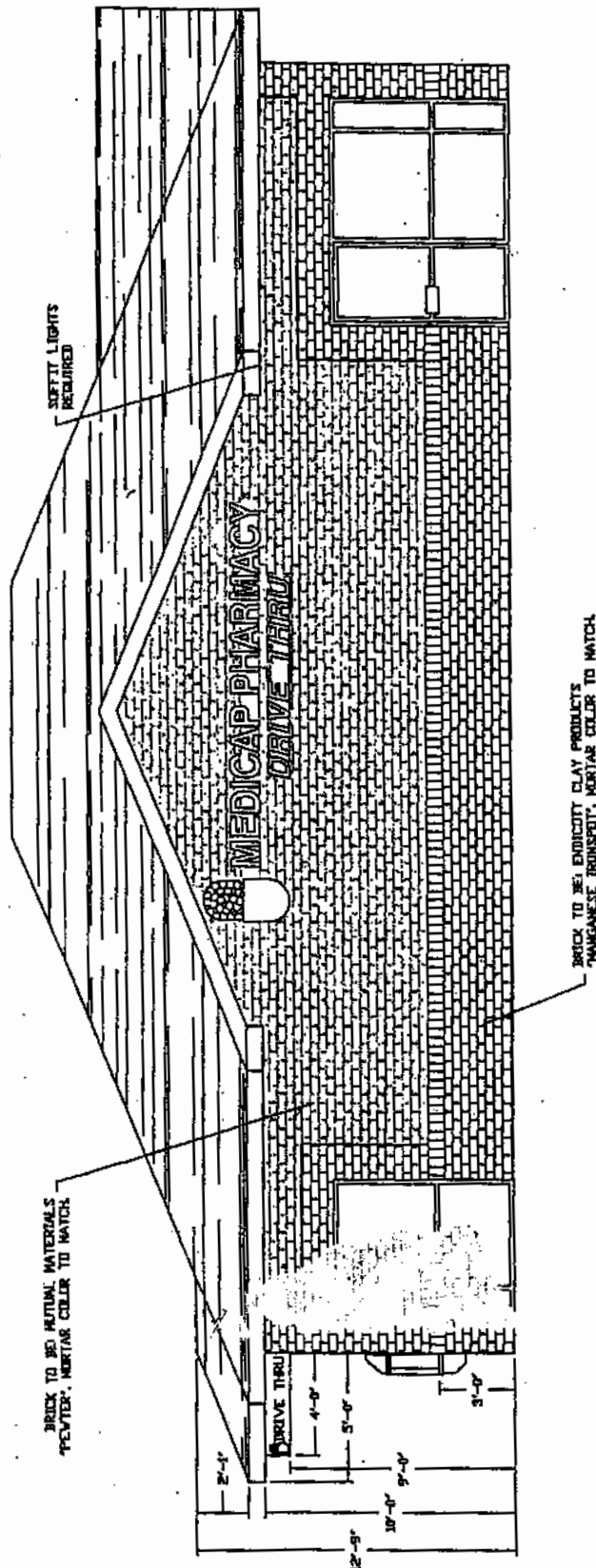
DATE: 7/1/03

SCALE: 3/16"=1'0"

REVISED:

PAGE
#13

610



MEDICAP PHARMACY
50x40 PRTOO-TYPE

FRONT ELEVATION

DATE: 7/1/03

SCALE: 3/16"=1'0"

REVISED:

PAGE
#12

019

MOTION TO AMEND

I hereby move to amend the Conditions recommended by the Lincoln City/Lancaster County Planning Staff Report for Change of Zone #04033, Use Permit #94B to read as follows:

CONDITIONS:

Site Specific:

1. This approval permits a total of 47,000 square feet of floor area and a reduction in the front yard setback along N. 26th Street from 50' to 20'.

General:

2. Before receiving building permits:
 - 2.1 The permittee shall complete the following instructions and submit the documents and plans to the Planning Department office for review and approval.
 - 2.1.1 A revised site plan showing the following revisions:
 - 2.1.1.1 Correct the typo in the "Existing Use Permit Legal Description".
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 - 3.3 The site plan accompanying this permit shall be the basis for all interpretations of setbacks, yards, locations of buildings, location of parking and circulation elements, and similar matters.
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4. The site plan as approved with this resolution voids and supersedes all previously approved site plans, however all resolution approving previous permits remain in force unless specifically amended by this resolution.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

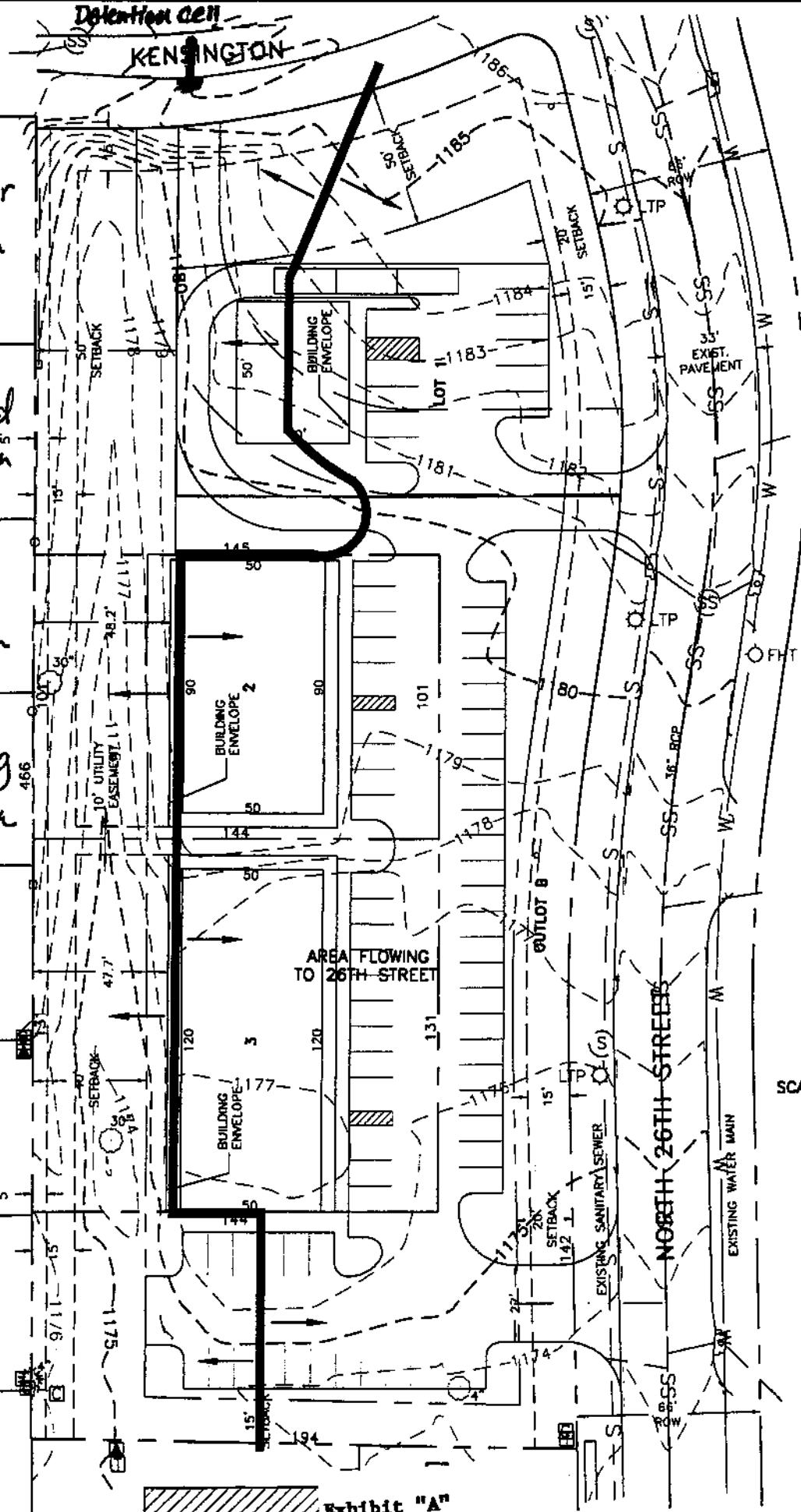
Requested by: SEACREST & KALKOWSKI, P.C.

Vingil and
Carol Mohr
5048 N. 25th

Daniel and
Brenda Reed
5042 N. 25th

Michael and
Cindy Lanini
5036 N. 25th

Leroy and
Dorothy Ang
5030 N. 25th



ITEM NO. 1.3a&b: CHANGE OF ZONE NO. 04033

USE PERMIT NO. 94B

(p.37 Consent Agenda - 5/26/04)

May 19, 2004

CITY OF LINCOLN PLANNING COMMISSION

RE: CHANGE OF ZONE NO. 04033 AND USE PERMIT NO. 94B
N. 26TH STREET & KENSINGTON DRIVE
0-3 TO B-2

WE HEREBY OPPOSE THE CHANGING OF ZONE AND USE OF THE ABOVE
UNLESS WATER IS DIVERTED EAST TO 26TH STREET AND NONE IS
DIVERTED TO THE AREA BEHIND OUR LOT WHICH IS DESCRIBED BELOW.

BICENTENNIAL ESTATES 1ST ADD BLOCK 9, LOT 4 ALSO KNOWN AS 5030 N
25TH ST, LINCOLN, NE 68521.

PLACING LARGE PARKING LOT AREAS AND BUILDINGS WITHOUT
DIVERTING WATER FLOW TO THE EAST WILL JEOPARDIZE OUR PROPERTY
WHEN LARGE AMOUNT OF RAINFALL ARE RECEIVED.

SINCERELY

Le Roy Ang *Dorothy E. Ang*
LEROY ANG DOROTHY E. ANG

